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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/030,595 | 01/08/2002 | Robert W. Tritchler | GRC 19.329 (100671-00050) | 6456 |
| 26304 | 7590 | 07/12/2004 | EXAMINER | |
| KATTEN MUCHIN ZAVIS ROSENMAN 575 MADISON AVENUE NEW YORK, NY 10022-2585 | | | DUNWOODY, AARON M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3679 | |

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/030,595

Applicant(s)

TRITCHLER ET AL.

Examiner

Aaron M Dunwoody

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3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 12, 14-18, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12, 14-18, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-9, 12, 14-18 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new matter is "an operative condition" which is not defined in the specification, drawings or claims. Claims in a pending application should be given their broadest reasonable interpretation; therefore, the Examiner will interpret "an operative condition" as being capable of operating.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 904673, Bideker.

In regards to claim 1, Bideker discloses a swivel joint for connecting to a water line in a plumbing accessory outlet, the joint comprising:

a first member (B) having an externally milled barrel and a second member (A) having an internally milled barrel,

wherein in an operative condition the second member accommodates the first member in a leak-proof yet relatively rotatable relationship,

wherein the first and second members are held together by a cylindrically shaped housing (C) that is rotatably engaged with one member and receives the milled barrel of the other member within the housing and is adjustably engaged with the other member whereby adjustment of the collar enables the tightening of the swivel joint to the operative condition.

In regards to claim 2, Bideker discloses a recess being formed in the externally milled barrel of the first member which accommodates an o-ring (d).

In regards to claim 3, Bideker discloses the barrel of the first member being tapered to facilitate assembly with the second member which has a complementary taper.

In regards to claim 4, Bideker discloses the second member being adapted for connecting to a water line and the first member being adapted for connecting to an attachment.

In regards to claim 6, Bideker discloses the attachment being a shower head.

In regards to claim 7, Bideker discloses the first member being integrally formed on an attachment.

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In regards to claim 8, Bideker discloses the attachment being a shower head

In regards to claim 9, Bideker discloses the second member being integrally formed on the water line.

Claims 14-18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 4927188, Sands.

In regards to claims 14 and 22, Bedeker discloses a swivel joint for connecting to a water line in a plumbing accessory outlet, the joint comprising:

a first element (14) having a barrel with an externally projecting milled face, and
a second element (10) having a barrel with an externally projected milled face,
wherein a resiliently deformable sealing member (52) is accommodated in one of the faces, and the first and second elements are held together in face-to-face leak-proof yet relatively rotatable relationship in an operative condition by means of a cylindrically shaped housing;

wherein a thrust washer is disposed between the cylindrical shaped housing and one of the elements, and

wherein the cylindrically shaped housing is rotatably engaged with one member and receives the milled barrel of the outer member within the housing and is adjustably engage with the other member whereby adjustment of the collar enables the tightening of the swivel joint.

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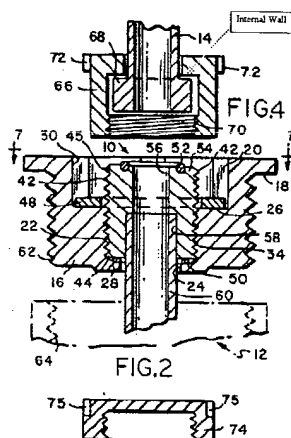
In regards to claim 15, Bedeker discloses the resiliently deformable sealing member being an o-ring.

In regards to claim 16, Bedeker discloses the o-ring being located in a recess formed in the face of the second element.

In regards to claim 17, Bedeker discloses the second element being adapted (capable) for connecting to a water line and the first element being adapted for connecting to an attachment

In regards to claim 18, Bedeker discloses the attachment being a shower head.

In regards to claim 21, Bedeker discloses the housing including an internal wall (see Figure 2 below), offset from one end of the housing, with an opening therethrough.



Response to Arguments

Applicant's arguments filed 5/19/2004 have been fully considered but they are not persuasive. The Applicant argues:

...Applicant has amended the claims to clarify the present invention from the Bideker disclosure by providing that the

tightening of the cylindrical housing results in an operative condition defined as a leak-proof yet relatively rotatable relationship between the first and second members. In other words, the swivel joint is rotatable and at the same time provides a water-tight seal when the housing is tightened.

The Examiner disagrees. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new matter is "an operative condition" which is not defined in the specification, drawings or claims. The Examiner is aware that the Applicant is entitled to be his/her own lexicographer, but important terminology must be defined in the original specification and not by arguments.

Further, while anticipation requires the disclosure of each and every limitation of the claim at issue in a single prior art reference, it does not require such disclosure *in haec verba*. In re Bode, 550 F.2d 656, 660, 193 USPQ 12, 16 (CCPA 1977). In addition, it does not require that the prior art reference "teach" what the application at issue teaches. Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). Finally, Applicant is reminded that during examination claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Therefore, Bideker meets the claimed limitations.

The Applicant argues:

...Applicant has provided for a thrust washer disposed between said cylindrical shaped housing and one of the elements...Applicant's specification, thrust washers (42, 45) are included to prevent abrasive action respectively between

the barrel lip (43) and the inner wall (44)... Sands connection is not intended to function like the swivel joint of the present invention.

In response to applicant's argument that Sands connection is not intended to function like the swivel joint of the present invention, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Therefore, Sands '188 meets the claim limitations.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron M Dunwoody whose telephone number is 703-306-3436. The examiner can normally be reached on 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P Stodola can be reached on 703-306-5771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

.amd



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